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JUN 26 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In the Matter of )

Amendment of Section 73.202(b)	)	MM Docket No. 96-10
Table of Allotments	)	RM-8738
FM Broadcast Stations	)	RM-8799
(Farmersville, Blue Ridge,	)	RM-8800
Bridgeport, Eastland,	)	RM-8801
Flower Mound, Greenville,	)	
Henderson, Jacksboro,	)	
Mineola, Mt. Enterprise,	)	
Sherman and Tatum, Texas;	)	
and Ada, Ardmore and	)	
Comanche, Oklahoma)	)	

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

SUPPLEMENT

1. Hunt Broadcasting, Inc. ("Hunt") and Cowboy Broadcasting, L.L.C. ("Cowboy"), by their counsel, hereby submit a supplemental pleading in response to a request from Commission staff<sup>1/</sup> for a clarification of the circumstances involving Station KDDQ(FM), Comanche, Oklahoma. In particular, the staff has asked Hunt to clarify its commitment to reimburse two separate parties for the changes to be made by Station KDDQ and the applicability of Section

<sup>1/</sup> In view of the fact that the petition for reconsideration filed by Gleiser Communications, Inc., on February 18, 1997 was withdrawn on March 27, 1997, there are no parties in opposition to the Commission's Report and Order granting the Hunt/Cowboy proposal. Under these circumstances, the Commission staff has apparently determined that it is appropriate to contact counsel to Hunt/Cowboy to request a clarification without having to formally notify all other parties to this proceeding. All parties are being served with this pleading.

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1.420(j) to a withdrawal pleading filed July 18, 1996 by Comanche Radio, L.L.C. ("Comanche Radio").

#### BACKGROUND

2. As part of the Hunt/Cowboy counterproposal filed on April 5, 1996, Station KDDQ, Comanche, Oklahoma would change its channel allotment from Channel 245C2 to Channel 246A at a new transmitter site location. Station KDDQ was licensed to operate on Channel 244A at 3kW ERP. The license had failed to implement a previously ordered upgrade to Channel 245C2 in MM Docket 88-587 in 1989. Thus in order to propose this channel substitution, it was necessary for Hunt/Cowboy to obtain the licensee's consent to the downgrade and transmitter site relocation.

3. In its counterproposal, Hunt/Cowboy stated that according to the Commission's records, Harold Cochran was the licensee of KDDQ. The station was not operating at that time so Hunt/Cowboy relied on the Commission's records to establish the licensee's identity. The Commission's records revealed that on September 25, 1995, the Commission granted an assignment of license application from Mr. Cochran to Comanche Radio, L.L.C. (BALH-950713GH). But there was no document on file notifying the Commission that the transaction had been consummated. Hunt's representative contacted Mr. Cochran and Mr. Cochran took the position that the transaction had not been properly consummated and he was still the licensee. Mr. Cochran was willing to consent to the proposed facility changes. An agreement was reached for an appropriate amount of

reimbursement and Cochran provided a declaration to that effect as part of the Hunt/Cowboy counterproposal.

4. On May 9, 1996, the Commission issued a Public Notice announcing acceptance of the Hunt/Cowboy proposal. In response to that Public Notice, Comanche Radio submitted comments, on May 24, 1996, claiming to be the licensee and providing a date stamped copy of the letter of October 31, 1995 notifying the Commission that the KDDQ transaction had been consummated. Thus, Hunt/Cowboy became aware that two different parties claimed to be the licensee of KDDQ and that those parties were involved in litigation in Oklahoma to decide this matter. Hunt/Cowboy was certainly not in a position to know whether the transaction had ever been properly consummated and therefore could not presume to know who would prevail in the lawsuit. Rather than await the outcome of the litigation, Hunt/Cowboy reached an agreement with Comanche Radio which was filed on July 18, 1996 as part of Comanche Radio's withdrawal pleading. The agreement was predicated on Comanche Radio being the licensee and making the necessary facility changes for which it would be reimbursed.

6. Thus, Hunt/Cowboy had an agreement to reimburse Cochran for the facility changes if it turned out that Cochran was the licensee of KDDQ. Likewise, Hunt/Cowboy had a separate agreement with Comanche Radio for reimbursement if it turned out that Comanche Radio was the licensee and would be making the changes. This position was set forth in a filing by Hunt/Cowboy on July 18, 1996 entitled "Supplement to Joint Request for Settlement" and also

explained in Comanche Radio's "Request to Withdraw Comments of Comanche Radio, L.L.C." It was Hunt/Cowboy's intent to facilitate action by the Commission on the pending counterproposal by providing the consent of both parties claiming to be the licensee rather than to await a final ruling by the court.

7. In its Report and Order in this proceeding, the Commission staff did not decide this matter but instead relied on the fact that Hunt/Cowboy had reached an agreement with both parties for their respective consents to the facility changes. See Report and Order at ¶15 and note 12.

8. Section 1.420(j) of the Commission's Rules states:

"Whenever an expression of interest in applying for, constructing, and operating a station has been filed in a proceeding to amend the FM or TV Table of Allotments, and the filing party seeks to dismiss or withdraw the expression of interest, either unilaterally or in exchange for financial consideration, that party must file with the Commission a request for approval of the dismissal or withdrawal, a copy of any written agreement related to the dismissal or withdrawal, and an affidavit setting forth:

- (1) A certification that neither the party withdrawing its interest nor its principals has received or will receive any money or other consideration in excess of legitimate and prudent expenses in exchange for the dismissal or withdrawal of the expression of interest;
- (2) The exact nature and amount of any consideration received or promised;
- (3) An itemized accounting of the expenses for which it seeks reimbursement; and
- (4) The terms of any oral agreement related to the dismissal or withdrawal of the expression of interest.

(5) In addition, within 5 days of a party's request for approval, each remaining party to any written or oral agreement must submit an affidavit setting forth:

(i) A certification that neither it nor its principals has paid or will pay money or other consideration in excess of the legitimate and prudent expenses of the party withdrawing its expression of interest; and

(ii) The terms of any oral agreement relating to the dismissal or withdrawal of the expression of interest.

9. This provision does not apply to Comanche Radio's comments in which it claimed to be the licensee of KDDQ and its subsequent withdrawal of those comments after it reached an agreement for reimbursement of the facility changes it would be required to make as the licensee. Comanche Radio was not expressing an interest in applying for, constructing or operating a station. Rather, Comanche Radio filed its comments as the licensee and if Comanche Radio is to spend money to make changes in its facility, including a new transmitter site relocation, forfeiting a possible upgrade in its class of station, new equipment, etc., it argued that it was entitled to reimbursement for its out of pocket expenses as well as some compensation for the devaluation of the station due to the loss of a potential upgrade.

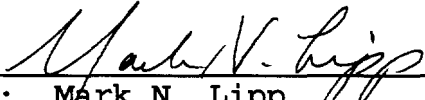
10. Hunt/Cowboy strongly believe that it was proper to reach an agreement with both Cochran and Comanche Radio based on whichever party is the licensee of KDDQ. The Hunt/Cowboy and Comanche Radio agreement that was filed with the withdrawal pleading did not purport to pay Comanche Radio for withdrawing its

opposition comments. The payment was to be reimbursement for the facility changes that the station was ordered to make. Accordingly, Section 1.420(j) does not apply to these circumstances.

Hunt/Cowboy provide this clarification in the hope that it will facilitate a resolution of this proceeding. Hunt/Cowboy respectfully urge the Commission to act expeditiously to dismiss the petition for Gleiser Communications, Inc. which has been withdrawn.

Respectfully submitted,

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June 26, 1997

### CERTIFICATE OF SERVICE

I, Marianne Gilsenan, a secretary in the law firm of Ginsburg, Feldman and Bress Chartered, do hereby certify that I have this 26th day of June, 1997, caused to be mailed by first class mail, postage prepaid, copies of the foregoing "SUPPLEMENT" to the following:

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